

REMARKS/ARGUMENTS

Claims 1-3 remain pending in the application.

Reconsideration of the rejections and allowance of the pending application in view of the foregoing amendments and following remarks are respectfully requested.

In the Office Action the specification is objected to as being replete with terms, which are not clear, concise and exact, and claim 1 is objected to because the recitation "the switching mechanism" therein lacks antecedent basis.

In response, the specification has been amended to more clearly, concisely and exactly describe the presently claimed embodiment by correcting not only the portions indicated by the Examiner but also the entire specification, and claim 1 has been amended to correct the lack of antecedent basis. Thus, Applicant respectfully submits that the objections to the specification and claim 1 are now moot.

In the Office Action, claims 1 and 2 are rejected under 35 U.S.C. § 102(a) as being unpatentable over the Applicant's Admitted Prior Art ("AAPA"), and claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over AAPA in view of Takahashi et al., (U.S. Patent No. 5,901,025, hereinafter "Takahashi"). These rejection are respectfully traversed.

Applicant notes that the AAPA fails to teach or suggest the combination of elements as recited in amended claim 1. In particular, claim 1 sets forth a thermal overload relay including, inter alia, a case having a bottom surface, a plurality of main bimetals arranged such that a longitudinally extending direction of each

main bimetal is generally parallel to the bottom surface of the case and configured to bend when the abnormal state occurs, and..... a lever connected to the shifter that transfers the movement force from the shifter to the switch, wherein a temperature compensation bimetal contacts an end of the lever.

The Examiner has, in the Response to Arguments, asserted that that “the bottom surface may be any surface of the case, depending on the orientation thereof”

Applicant submits that the foregoing statement of the Examiner is without factual basis, and the AAPA reference lacks any disclosure of the plurality of main bimetals arranged such that a longitudinally extending direction of the main bimetals is generally parallel to the bottom surface of the case. Therefore, the above-noted arrangement of AAPA results in an increased height of the case (see, page 9, lines 1-3, of Applicant's specification). Further, the AAPA clearly indicates which surface is the bottom surface of the actuator (see, page 8, lines 1-10 of Applicant's specification). Thus, orienting the case as suggested by the Examiner would only result in the case resting on its back-side, and not a change in the identifiable bottom surface. Thus, the AAPA fails to disclose a plurality of main bimetals arranged such that the longitudinally extending direction of the main bimetals is generally parallel to the bottom surface of the case.

Accordingly, AAPA does not anticipate the presently claimed embodiment or render the presently claimed invention unpatentable.

Applicant further submits that dependent claim 3 is at least patentable due to its dependency from claims 1 for reasons noted above. In this regard, even

assuming, arguendo, that the teachings of AAPA and Takashi have been properly combined, the proposed combination still would not have resulted in the features of the embodiments of the present disclosure.

Further, the Examiner has not presented sufficient motivation for the proposed modifications, and the only reason to combine the teachings of the applied prior art results from a review of Applicant's disclosure and the application of impermissible hindsight.

Thus, the asserted combination of AAPA and Takahashi would not result in the embodiment as recited in claim 3.

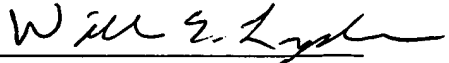
Independent claim 1 is now in condition for allowance in view of the amendments and the above-noted remarks, and claims 2 and 3 dependent thereon are also submitted to be in condition for allowance in view of their dependence from the allowable base claims and also at least based upon their recitations of additional features of the present invention. It is respectfully requested, therefore, that the rejections under 35 U.S.C. 102(b) and 35 U.S.C. 103(a) be withdrawn and that an early indication of the allowance thereof be given.

Any amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based on prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to be attached thereto.

Based on the above, it is respectfully submitted that this application is now in condition for allowance, and a Notice of Allowance is respectfully requested.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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